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11 Attorneys for Secured Creditor BOSTON PRIVATE
12 BANK & TRUST COMPANY, formerly known as
13 and successor to Borel Private Bank & Trust
14 Company

15 UNITED STATES BANKRUPTCY COURT
16
17 NORTHERN DISTRICT OF CALIFORNIA
18
19 SAN JOSE DIVISION

20 In re:
21
22 272 E. Santa Clara Grocery, LLC,
23
24 Debtor.

CASE NO. 13-53491

CHAPTER 11

**DECLARATION OF COUNSEL IN
SUPPORT OF OPPOSITION TO EX
PARTE APPLICATION FOR ORDER
DIRECTING BOSTON PRIVATE BANK &
TRUST COMPANY'S PRODUCTION OF
DOCUMENTS UNDER BANKRUPTCY
RULE 2004**

25 I, Stephen J. Kottmeier, declare:

26 1. I am an attorney at law duly licensed under the laws of the State of California and
27 am admitted to the bar of this Court. I am a shareholder with Hopkins & Carley, a Law
28

1 Corporation, attorneys of record for Secured Creditor Boston Private Bank & Trust Company,
2 formerly known as and successor to Borel Private Bank & Trust Company ("BPB"). I make this
3 declaration pursuant to Bankruptcy Rule 2004 in support of BPB's Opposition to Ex Parte
4 Application for Order Directing Boston Private Bank & Trust Company's Production of
5 Documents Under Bankruptcy Rule 2004. The facts stated herein are true based upon my
6 personal knowledge or upon my information and belief based upon our investigation of this
7 matter.

8 2. I am the lead counsel at Hopkins & Carley with respect to the action that BPB
9 filed in the Santa Clara County Superior Court under case number 113-CV-247691 ("BPB's State
10 Court Action"), and BPB's related application to obtain an order for the appointment of a
11 Receiver for the real property located at 272 East Santa Clara Street, San Jose, CA 95112. In
12 BPB's State Court Action, our office received a copy of a "Declaration of Andrew A Lewis In
13 Opposition To Plaintiff's Motion For Order Appointing Receiver And Issuing A Preliminary
14 Injunction" (the "Lewis Declaration") that was filed with the Santa Clara County Superior Court.
15 A true and correct copy of the Lewis Declaration is attached hereto as **Exhibit A**. Accordingly,
16 pursuant to Federal Rule of Evidence 201, the Court is asked to take Judicial Notice of the Lewis
17 Declaration.

18 3. In BPB's State Court Action, our office filed a "Reply Declaration of David
19 Schieber in Support of Plaintiff's Application for Appointment of Receiver and Restraining Order
20 in Aid of Receiver" ("Schieber Reply Declaration"). A true and correct copy of the Schieber
21 Reply Declaration is attached hereto as **Exhibit B**. Accordingly, pursuant to Federal Rule of
22 Evidence 201, the Court is asked to take Judicial Notice of the Schieber Reply Declaration.

23 4. I am aware that Borel Private Bank and Trust ("Borel") merged into BPB. Based
24 on my preliminary investigation, it is my understanding that BPB should have access to Borel's
25 computer archives and separate computer system but that it would be necessary to access those
26 archives. BPB has not yet had the opportunity to access those Borel archives to determine the
27 volume of documents (e.g., e-mails), if any, exist responsive to the requests in the Application.
28 However, it is also my understanding that doing so would be very time-consuming so that it could

1 not be done by August 30, 2013, and would also be costly. I am working with BPB to obtain an
2 estimate of the time and cost to perform that search.

3 5. At approximately 1 p.m., on Tuesday, August 13, 2013, I received an e-mail from
4 a Court administrator advising me that that the Court would hold a hearing regarding BPB Rule
5 2004 applications at 1:00 p.m., on Friday, August 16, 2013.

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct and this declaration was executed on this 15th day of August, 2013,
8 at San Jose, California.

9 /s/ Stephen J. Kottmeier

10 Stephen J. Kottmeier